Hong Kong Police Force refused to provide headings of all chapters in Police General Orders
(Related to Code on Access to Information)

Investigation Report

Background

The Police General Orders ("PGO") is an administrative document made by the Commissioner of Police under section 46 of the Police Force Ordinance ("the Ordinance"), which stipulates that the Commissioner may from time to time make such orders as he thinks expedient to enable him to administer the police force, render the police force efficient in the discharge of its duties and for carrying out the objects and provisions of the Ordinance.

2. At present, the headings and content of some chapters in PGO are available on the website of the Hong Kong Police Force ("HKPF") for public inspection. The headings and content of the remaining chapters are not disclosed.

The Complaint

3. The complainant made a request via email for access to the headings of all chapters in PGO. HKPF replied that the complainant can obtain information of PGO from its website, and provided him with the relevant hyperlink. The complainant subsequently pointed out to HKPF that he requested the headings of all chapters in PGO, but HKPF's website only provided the headings of some chapters (**paragraph 2** above).

4. In its further reply to the complainant, HKPF claimed that after years of amendment, some chapters and content of PGO are non-existent. HKPF also refused to provide certain parts of information in PGO by citing paragraphs 2.6(e) and 2.6(f) of the Code on Access to Information ("the Code") (**paragraph 8** below).

Those parts available for public inspection have been uploaded to HKPF's website.

5. The complainant further requested HKPF to clarify which chapters in PGO are non-existent, and which chapters are not disclosable. In its reply to the complainant, HKPF reiterated that the information available for public inspection has been uploaded to the Department's website. HKPF also claimed that the undisclosed information in PGO involves details of its operations. Hence, pursuant to paragraphs 2.6(e) and 2.6(f) of the Code, HKPF refused to disclose such information to the complainant.

6. In the light of the above, the complainant made a complaint to this Office against HKPF for its unreasonable refusal to disclose the headings of all chapters (including non-existent and undisclosed chapters) in PGO.

Our Findings

Relevant Provisions of the Code

7. The Code stipulates that Government departments should accede to requests from members of the public for access to information, unless there are valid reasons under Part 2 of the Code to withhold the information. According to paragraph 2.1.2 of the Guidelines on Interpretation and Application of the Code ("the Guidelines"), when refusing or partially refusing a request for information, departments must inform the applicant concerned of the reasons for refusal quoting all the relevant paragraphs in Part 2 of the Code on which the refusal is based with appropriate elaboration to justify invoking the relevant paragraphs (where applicable).

8. In this case, HKPF invoked the following provisions in Part 2 of the Code as the reasons for refusing the complainant's request for information:

- Paragraph 2.6(e): “*Information the disclosure of which would harm or prejudice the prevention, investigation and detection of crime and offences, the apprehension or prosecution of offenders, or the security of any detention facility or prison.*”

- Paragraph 2.6(f): “*Information the disclosure of which would harm or prejudice the preservation of the peace, public safety or order, or the preservation of property.*”

Response from HKPF

9. According to information from HKPF, the headings and content of some chapters in PGO are currently not disclosed, while the headings and part of the content of some other chapters are available to the public. Regarding the “non-existent” content of some chapters as mentioned in its reply to the complainant (**paragraph 4** above), HKPF explained that those chapters currently only have a chapter number, without any heading or content.

10. HKPF indicated that the nature of those undisclosed chapters involves HKPF’s investigation procedures, guidelines and restrictions encountered for miscellaneous and criminal cases, and the operational plans and procedures for various enforcement actions. Disclosing those chapters might assist persons with an intent to disrupt public safety and order, or other lawbreakers, to grasp the procedures adopted by HKPF for case investigation and law enforcement, thereby finding ways to circumvent or obstruct HKPF’s enforcement actions. It would hinder HKPF from discharging its statutory duties of maintaining public safety, preventing and detecting crime, etc.

11. Although the complainant only requested access to the chapter headings in PGO, HKPF considered it improper to handle the headings and content of the chapters separately because they are closely related. HKPF explained that disclosing the headings of those unavailable chapters might incite persons with an intent to

commit certain kinds of crime to attempt to obtain the content of chapters pertaining to such offences, thereby exploring targeted methods for circumventing the detection and enforcement of HKPF.

12. Moreover, HKPF contended that disclosing all chapter headings might generate a misunderstanding among the public that HKPF only focuses on certain case categories or enforcement ambit, and incite lawbreakers to seize the opportunity to commit offences not covered by PGO.

13. HKPF considered its officers to have handled the complainant's request for information pursuant to the Code, and have explained to the complainant its reasons for withholding the information as far as practicable.

Our Comments

14. According to paragraph 2.6.17 of the Guidelines, paragraph 2.6(e) of the Code is generally applicable to information relating to both ongoing and completed investigations and to contemplated prosecutions, such that the investigations conducted by law enforcement agencies and their investigation methods are kept confidential from suspects and other persons. Furthermore, paragraph 2.6(e) of the Code can also be invoked to withhold information if its disclosure would be prejudicial to an enforcement or administrative process.

15. As for paragraph 2.6(f) of the Code, it is elaborated in paragraph 2.6.20 of the Guidelines that the Code does not oblige the Government to disclose information which would assist those who attempt to disturb public order or threaten property.

16. In response to our investigation, HKPF provided this Office with the headings of all chapters in the current PGO. We notice that the headings of those undisclosed chapters only give a general idea about the themes of those chapters, without any specific content. Even if the information in those chapters is indeed about HKPF's criminal investigations or operational plans for enforcement, etc.

(**paragraph 10** above), and thus falls within the categories of information under paragraphs 2.6(e) and 2.6(f) of the Code as claimed by HKPF, we consider that merely disclosing the **headings** (not content) of those chapters would hardly result in the situations as described by HKPF in **paragraphs 11 and 12** above. We find it far-fetched for HKPF to argue that disclosing the chapter headings would be prejudicial to its duties of maintaining public safety, preserving property, preventing and detecting criminal offences, and apprehending criminals. Moreover, we cannot see how merely disclosing the relevant chapter headings would incite lawbreakers to attempt to obtain the content of those chapters or give them any substantive advantage, or would be beneficial to persons with an intent to disturb public safety or threaten property belonging to others.

17. In fact, HKPF submitted in April 2003 a progress report[1] to the Panel on Security of the Legislative Council ("LegCo") about uploading PGO to the Information Kiosks in police stations. The report provides the total number of chapters in the then PGO and listed out the headings of those chapters that HKPF decided to withhold from the public at that time. There is no information showing that the practice in 2003 has led to the situations or concerns raised in **paragraphs 11 and 12** above. This further demonstrates that HKPF's reasons for refusing to provide the complainant with the headings of those undisclosed chapters in the current PGO are unjustified.

18. Meanwhile, information from HKPF (**paragraph 16** above) shows that the non-existent chapters in PGO currently are indeed only with a chapter number but without any heading (**paragraph 9** above). We believe that it would help allay the complainant's concern if HKPF could have given him further elaboration in its replies.

Major Points of HKPF's Feedback to Our Comments

1 https://www.legco.gov.hk/yr02-03/english/panels/se/papers/se0506cb2-1779-1e-scan.pdf

19. HKPF indicated that it had sought legal advice, and insisted that it is justified to invoke paragraphs 2.6(e) and 2.6(f) of the Code to refuse the complainant's information request.

20. HKPF cited paragraph 2.2.2 of the Guidelines, which states that it is not necessary to be able to prove in any particular case that harm or prejudice would result from disclosure of particular information. It will be sufficient if there is a risk or reasonable expectation of harm in the circumstances. Paragraphs 2.6.16 and 2.6.19 of the Guidelines point out that the Code does not oblige the Government to disclose information which would be of assistance to actual or potential lawbreakers. In evaluating the probability that disclosure would be prejudicial to a law enforcement process or facilitate the commission of an offence, it will be sufficient if it is more likely than not that prejudice would result from disclosure of the information sought.

21. HKPF asserted that PGO is a crucial cornerstone of its efficient operation to carry out the objects and provisions of the Ordinance. HKPF opined that, in considering the complainant's request, the effect of PGO on the overall operation of the Department should be taken into account. Disclosing all chapter headings in PGO might allow lawbreakers to grasp the ambit covered by PGO, thereby impairing the enforcement efficiency of HKPF.

22. HKPF reiterated that parts of PGO include HKPF's procedures and guidelines for case investigation. Disclosing such information would assist lawbreakers to estimate HKPF's overall capacity for case investigation and enforcement actions. Chances are that it would cause lawbreakers to wilfully circumvent or interfere with the investigation procedures, or wilfully commit those offences not listed under PGO.

23. Meanwhile, HKPF contended that the document submitted to the LegCo in April 2003 (**paragraph 17** above) was not supposed to be disclosed to the public at that time. The Department disagreed

that the submission of that document to the LegCo in the past would necessarily preclude HKPF from invoking the Code to refuse the disclosure of all chapter headings in PGO at present. In handling each request for information, HKPF would independently scrutinise the particular circumstances of that request.

24. Furthermore, HKPF alleged that in his request for information, the complainant had not specified his precise purpose which might involve overwhelming public interest. Consequently, after balancing the public interest in disclosure against any harm or prejudice that might result, HKPF concluded that the harm which might arise from disclosure to the delivery of justice would outweigh any unidentified potential public interest. Even if the complainant might submit his purpose of requesting the information, HKPF, after seeking legal advice and referring to a number of precedents, considered that it could rely on *public interest immunity* to refuse the disclosure of all chapter headings in PGO.

Our Comments on HKPF's Feedback

25. The provisions of the Code (**paragraph 7** above) aim at fostering an open and accountable Government, which is in itself for the purpose of public interest. In making a request for information, members of the public are not required to specify any precise purpose or what public interest is involved. Paragraph 1.10.2 of the Guidelines further clarifies that the purpose of the request, or refusal to reveal the purpose on the part of the requestor, should not be a reason for withholding the information.

26. As pointed out by HKPF in **paragraph 20** above, when Government departments invoke the provisions in Part 2 of the Code to withhold information and consider the "harm" or "prejudice" that might result from disclosure, paragraph 2.2.2 of the Guidelines explains that it will be sufficient if there is a risk or reasonable expectation of harm in the circumstances. That paragraph further remarks that "where the perceived risk is neither very likely nor serious, it should be given less weight". Moreover,

paragraph 2.6.19 of the Guidelines also reminds departments that in citing paragraph 2.6(e) of the Code to withhold information, they should evaluate the probability of causing relevant prejudice. Evidently, although in this case HKPF was not required to prove that the specified harm or prejudice would certainly arise when invoking paragraphs 2.6(e) and 2.6(f) to withhold the relevant information, it was still essential for HKPF to give clear and reasonable justification that the disclosure of information is likely or reasonably expected to cause such harm or prejudice. By the same token, the question of whether it could raise public interest immunity must take this point into account.

27. We agree that if the disclosure of particular information will hinder the police from preventing and detecting crime, maintaining public safety, etc., the nature of such prejudice can be serious. We also accept that in the current social atmosphere, certain people indeed wish to obstruct police enforcement. Nevertheless, HKPF just repeatedly stressed that disclosing all chapter headings in PGO at present would reflect the ambit covered by PGO (**paragraph 21** above), without any further elaboration on how lawbreakers could actually use such information to impair HKPF's enforcement efficiency, or to estimate HKPF's overall enforcement capacity, thereby circumventing or interfering with its investigations (**paragraphs 11 and 22** above). There is no evidence that if lawbreakers become aware of the ambit or offences not covered by PGO, they will misunderstand that HKPF does not have sufficient capacity to handle, and thus will wilfully commit such offences (**paragraph 12** above). After all, given the multiplicity of crime, PGO cannot and will not cover all offences.

28. We also accept that while HKPF disclosed all chapter headings in 2003, it does not follow that it must adhere to the same practice at present, as its considerations can vary according to different circumstances. However, we opine that HKPF has failed to explain, in hindsight, why its practice at that time was improper and what prejudice was caused; or how the current situation is different from years ago, resulting in the need to hide those headings at present. Nor has it provided specific and convincing reasons or

examples to explain that after lawbreakers become aware of all chapter headings in PGO, how they can use such information to obstruct the Police from maintaining law and order.

29. Furthermore, it is pointed out in paragraph 2.2.6 of the Guidelines that *public interest immunity* is a basis upon which the Government may seek to withhold information from production in court proceedings and it should not be confused with *public interest*. While HKPF considered that it could rely on *public interest immunity* to refuse the disclosure of all chapter headings in PGO (**paragraph 24** above), it has in fact not provided any information showing that it was granted the immunity, such that it was not required to disclose all chapter headings in PGO. Since no court proceedings are involved in the complainant's information request and our investigation this time, HKPF's above claim of *public interest immunity* is not applicable.

30. Overall, we find HKPF to have failed to sufficiently justify invoking paragraphs 2.6(e) and 2.6(f) of the Code for refusal to disclose information in this case.

Conclusion

31. Based on the analysis in **paragraphs 14 to 18** and **25 to 30** above, we consider the complaint against HKPF **substantiated**.

Recommendation

32. We recommend that HKPF reconsider the complainant's information request pursuant to the Code. Unless there is specific and convincing justification to invoke paragraphs in Part 2 of the Code for refusal to disclose the requested information, it should accede to his request.

Office of The Ombudsman
May 2020